

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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QUINCY M. NERI and RODNEY RIGSBY,

Plaintiffs,

OPINION and ORDER

v.

11-cv-429-slc

MELINDA MONROE, STEVE LARSON,  
ARCHITECTURAL BUILDING ARTS, INC.,  
LESLIE SAGER,<sup>1</sup> FRITZ SCHOMBURG,  
ERIC FERGUSON and  
RURAL MUTUAL INSURANCE COMPANY,

Defendants.

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This case is proceeding on plaintiffs Quincy Neri and Rodney Rigsby's claim for infringement of the copyright in glass artwork installed in the entryway of a condominium. The entryway was designed by defendant Architectural Building Arts, and photographs of the entryway, including the artwork, have been used by the company in promotional materials. Plaintiffs are suing Architectural Building Arts, ABA's owners, Melinda Monroe and Steven Larson, for the use of these photographs, Leslie Sager (who designed lighting for the entryway) for use of photographs of the artwork on her faculty website, and Eric Ferguson (the photographer who took the pictures of the entryway and artwork). Defendant Rural Mutual Insurance Company has been granted leave to intervene to litigate its indemnification of defendant Ferguson.

Both plaintiffs and all defendant have moved for summary judgment. Also before the court are several nondispositive motions such as plaintiff's motions to compel disclosure of various defendants' financial records and defendants' motions to strike materials submitted by plaintiffs.

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<sup>1</sup> I have amended the caption to reflect the proper spelling of defendant Sager's name.

Having considering all of the motions for summary judgment and all documents filed in support of and in opposition thereto, I conclude that plaintiffs cannot sustain their infringement claims because they do not have a valid copyright registration in the sculpture. Accordingly, I am granting each defendant's motion for summary judgment (except for Rural Mutual's motion, which is moot) and I am denying plaintiffs' motion for summary judgment. In light of this conclusion, I have not addressed any of the other grounds for summary judgment advocated by the defendants. I am denying the residual nondispositive motions as moot.

For the purposes of deciding the summary judgment motions, I find from the parties' submissions that the facts set out below are material and undisputed, unless otherwise noted.<sup>2</sup>

## FACTS

Plaintiff Quincy Neri is a glass blowing artist who has worked with another local artist, Fritz Schomburg.<sup>3</sup> Defendant Melinda Monroe is president and co-owner of defendant

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<sup>2</sup> At the outset, I note several naming conventions used in this opinion for the sake of simplicity. In a March 23, 2012 order, the court granted the motion to intervene filed by plaintiff Rodney Rigsby, plaintiff Neri's business partner, who is a co-owner of the copyright at issue but who was not involved in creating the artwork. Neri and Rigsby are aligned in the case and have filed joint pro se submissions. For ease of reference I will refer to them jointly as "Neri" or "plaintiff."

The various defendants have filed several overlapping motions for summary judgment. I will refer to individual defendants by name where it is necessary to identify them specifically, but in general I will refer to them jointly as "defendants" regardless whether each defendant has joined each particular argument.

Finally, plaintiff calls the artwork at issue "Mendota Reflection," but defendants dispute when plaintiff came up with this title and whether it is correct. This dispute is immaterial to the summary judgment motions, so for ease of reference I will refer to the piece as "Mendota Reflection" or "the sculpture" without actually resolving the naming dispute.

<sup>3</sup> Schomburg originally was named as a defendant in this case but has settled with plaintiff.

Architectural Building Arts (ABA), along with defendant Steven Larson. ABA is a general contractor design/build firm focused on residential and commercial interior remodeling.

In April 2008, ABA was hired by Linda Hughes to remodel her condominium in Madison, Wisconsin. Part of the project entailed removing a large mural from the dome of the entryway into the condominium, disassembling the dome and replacing it with a barrel vault ceiling.

Hughes hired an interior designer, Amy Radspinner, to assist with the remodeling project and to handle decorating. Plaintiff and Schomburg worked together to create a blown glass sculpture comprised of about 60 individual blown glass pieces that were installed onto the remodeled ceiling. Plaintiff calls this sculpture “Mendota Reflection.”

The parties dispute who was responsible for almost every aspect of the remodeling project, including who designed the barrel vault ceiling (plaintiff says she did, while defendants say defendant Leslie Sager designed the ceiling and its recessed lighting), how much input Hughes had on the project, whether Neri or Schomburg was the creative mind behind the sculpture and whether plaintiff actually physically “created” the glass pieces. (Schomburg, acting as the “gaffer,” physically “blew” the glass, while plaintiff, acting as the “punter,” assisted by controlling the heat and appears to have at least some input over the process.) These disputed facts are immaterial to determining the validity of the copyright registration.

Before beginning work at the condominium, Monroe asked Hughes for permission to take “before,” “during,” and “after” photographs of the remodeling project to document their work, advertise ABA’s services and to apply for industry awards. ABA hired defendant Eric Ferguson, a professional photographer, to take a series of photographs of the interior of Hughes’s

condominium. The series of photographs taken by Ferguson include two photographs of the entranceway hallway and ceiling in the condominium. The two photographs include images of the “Mendota Reflection” sculpture.

In late 2009 and early 2010, defendant ABA posted some of these photographs on its website, [www.designbuildmadison.com](http://www.designbuildmadison.com). ABA also used some of these photographs in a newsletter that was available on its website during this same time frame, and submitted some of the pictures taken by defendant Ferguson as part of its application for Contractor of the Year awards sponsored by the National Association of the Remodeling Industry. In addition to these uses by ABA, Ferguson posted some of the photographs on his account at [www.flickr.com](http://www.flickr.com) and permitted defendant Sager to use the photographs on her own faculty website.

On May 4, 2011, plaintiff registered a copyright for a work called “The Artwork of Q,” which was assigned registration no. VAu 1-066-185. In connection with this application, plaintiff uploaded a total of 29 photographs of different pieces of artwork. Seventeen of those photographs contained the words “Mendota Reflection” in the title. One of the photographs uploaded has the title “The Artwork of Q-2011” that refers to a booklet of photographs of various artwork created by plaintiff, although none of the photographs in that booklet are of Mendota Reflection.

Plaintiff filed this copyright infringement lawsuit on June 15, 2011.

## OPINION

Plaintiff is pursuing claims that defendants infringed her copyright in “Mendota Reflections” by using pictures of the sculpture in various ways, including in defendant ABA’s promotional materials. Defendants raise a host of arguments in their motions for summary judgment, including that plaintiff is not truly the author of the sculpture. I need not consider this argument or several others raised by defendants because I conclude that plaintiff does not have a valid copyright registration in the sculpture and as a result cannot bring an infringement action.

Under 17 U.S.C. § 102(a)(5), sculptural works may be entitled to copyright protection. A plaintiff alleging copyright infringement must establish two elements: "(1) ownership of a valid copyright, and (2) copying of constituent elements of the work that are original." *Feist Publications Inc. v. Rural Telephone Service Co.*, 499 U.S. 340, 361 (1991). Material may be protected by copyright if it is an "original wor[k] of authorship fixed in any tangible medium of expression." 17 U.S.C. § 102(a). Obtaining a certificate of registration from the United States Register of Copyrights establishes a rebuttable presumption in favor of the copyrights’ validity, 17 U.S.C. § 410©. An accused infringer may overcome this presumption by showing that the copyright is invalid. *Team Play, Inc. v. Boyer*, 391 F. Supp. 2d 695, 699 (N.D. Ill. 2005).

17 U.S.C. § 411(a) mandates that “no civil action for infringement of the copyright in any United States work shall be instituted until preregistration or registration of the copyright claim has been made in accordance with this title.” Section 411(a)'s registration requirement does not restrict a federal court's subject-matter jurisdiction, but the requirement is similar to other types of filing preconditions such as the Prison Litigation Reform Act’s requirement that

a prisoner exhaust administrative remedies before filing a lawsuit. *Reed Elsevier, Inc. v. Muchnick*, \_\_\_ U.S. \_\_\_, 130 S.Ct. 1237, 1247 & n.6 (2010). Without a valid copyright registration, a plaintiff's infringement claims should be dismissed. *See, e.g., Olander Enterprises, Inc. v. Spencer Gifts, LLC*, 812 F.Supp. 2d 1070, 1079 (C.D. Cal. 2011) (summary judgment granted to defendants on plaintiff's infringement claim because plaintiff could not show its copyright registrations were valid); *Alaska Stock, LLC v. Houghton Mifflin Harcourt Pub. Co.*, 2010 WL 3785720, \*4 (D. Alaska Sept. 21, 2010) (motion to dismiss granted where plaintiff failed to properly register copyrights of images within a photo compilation); *Kluber Skahan & Assoc., Inc. v. Cordogen, Clark & Assoc., Inc.*, 2009 WL 466812 (N.D. Ill. Feb. 25, 2009) ("Defendants are correct in asserting that valid copyright registration is required before an infringement suit may be filed").

In plaintiff's August 3, 2011 amended complaint (the operative pleading), she alleges that she received a certificate of registration for her copyright of the sculpture, and she attached a copy of that certificate, no. VAu 1-066-185. There are several routes by which plaintiff could have validly registered "Mendota Reflection" *via* certificate no. VAu 1-066-185; defendants contend that plaintiff did not navigate any of them successfully. I examine each in turn:

## **I. Stand-alone Registration**

The first is a straightforward registration of the sculpture by itself. Defendants argue that plaintiff failed to accomplish this because an application for registration must include "the title of the work, together with any previous or alternative titles under which the work can be identified." 17 U.S.C. § 409(6). No. VAu 1-066-185 is for a work titled "The Artwork of Q."

This is not the title of the sculpture—plaintiff calls it “Mendota Reflection”—and plaintiff testified at her deposition that “The Artwork of Q” is a booklet containing images of some of her artwork. That booklet, however, does not contain any images of the sculpture at issue in this case. Plaintiff now argues that “The Artwork of Q” is not the title of the booklet, but rather an umbrella title for all of the items submitted under the application for no. VAu 1-066-185. Regardless whether this is correct, it is clear that plaintiff did not directly register the sculpture itself in a stand-alone registration.

## **II. Compilation or “Collection”**

The remaining routes to valid registration relate to plaintiff’s ability to package multiple preexisting items into a compilation. “A ‘compilation’ is a work formed by the collection and assembling of preexisting materials or of data that are selected, coordinated, or arranged in such a way that the resulting work as a whole constitutes an original work of authorship.” 17 U.S.C. § 101.

Under 17 U.S.C. § 409(10), a compilation registration must “include an identification of any preexisting work or works that it is based on or incorporates, and a brief, general statement of the additional material covered by the copyright claim being registered.” Defendants argue that although plaintiff uploaded several pictures of the sculpture along with her application, she fails to meet the compilation standards because she did not separately identify each work she intended to include in the compilation. They cite to several cases indicating that the failure to provide the information required under § 409 for each underlying item in a compilation dooms the registration of the individual items. *See Muench Photography,*

*Inc. v. Houghton Mifflin Harcourt Pub. Co.*, 712 F.Supp. 2d 84, 94 (S.D.N.Y. 2010) (individual photographs in compilation not properly registered where applicant failed to disclose each author's name); *Alaska Stock, LLC*, 2010 WL 3785720 at \*4 (individual photographs in compilation not properly registered where applicant failed to disclose names of authors of individual photographs or title of individual photographs); *Bean v. Houghton Mifflin Harcourt Pub. Co.*, 2010 WL 3168624, \*4 (D. Ariz. Aug. 10, 2010) (individual photographs in compilation not properly registered where applicant "failed to provide the titles of any of the individual photographs, largely failed to identify the authors of the photographs, and failed to connect any author with any individual photograph").

Plaintiff responds that "[r]egistration no. VAu 1-066-185 is a collection of works not a compilation." Plaintiff's distinction is probably incorrect; under 17 U.S.C. § 101, "[t]he term 'compilation' includes collective works." *See also Szabo v. Errisson*, 68 F.3d 940, 942 n.1 (5th Cir. 1995), ("A collection is also a 'compilation' for copyright purposes"), *abrogated on other grounds by Reed Elsevier, Inc.*, 130 S.Ct. 1237; *Heyman v. Salle*, 743 F.Supp. 190, 192 (S.D.N.Y. 1989) ("Those compilations which consist of contributions which themselves constitute 'works' capable of copyright are called collective works.").

In any event, I am not convinced that defendants are correct because other case law suggests that individual items in a compilation need not be formally listed on the registration in order to be registered in their own right. *See, e.g., Szabo*, 68 F.3d at 943-44 (individual songs included in collection of unpublished songs are protected by copyright "of the collection as a whole. It is irrelevant to its copyright status that [individual song] was not specifically listed on the copyright registration . . ."); *Xoom, Inc. v. Imageline, Inc.*, 323 F.3d 279, 283 (4th Cir. 2003)



(“where owner of a collective work also owns the copyright for a constituent part of that work, registration of the collective work is sufficient to permit an infringement action of the constituent part.”).

More to the point, regardless of defendants’ argument under § 409, I conclude that plaintiff’s registration for the sculpture under a “collection” theory fails because she did not meet other requirements to register properly the collection and any underlying original material.

“A collection or collective work is defined as ‘a work, such as a periodical issue, anthology, or encyclopedia, in which a number of contributions, constituting separate and independent works in themselves, are assembled into a collective whole.’” *Szabo*, 68 F.3d at 942 n.1 (citing 17 U.S.C. § 101). The Copyright Act allows multiple items to be registered in a single application as either (1) a group registration or (2) a single work registration, each of which have different requirements.

Regarding group registration, 17 U.S.C. § 408(c)(1) states that “[t]he Register of Copyrights is authorized to specify by regulation the administrative classes into which works are to be placed for purposes of deposit and registration. The regulations may require or permit . . . a single registration for a group of related works.” As defendants point out, the Register of Copyrights has exercised the authority delegated by § 408(c)(1) to promulgate rules allowing for group registration for “automated databases,” “related serials,” “daily newspapers,” “contributions to periodicals,” “daily newsletters” and “published photographs.” 37 C.F.R. § 202.3(b)(5)-(10). The Register of Copyrights has *not* issued regulations explicitly permitting group registration of sculptural works; courts have interpreted this to mean that sculptural works may not be presented in a group registration. *Kay Berry, Inc. v. Taylor Gifts, Inc.*, 421 F.3d 199,

204 (3d Cir. 2005) ("Since the Register of Copyrights has not promulgated regulations allowing for group registration of sculptural works, we conclude that Kay Berry's registration is not valid under the current group registration provisions."); *R.F.M.A.S., Inc. v. Mimi So*, 619 F.Supp. 2d 39, 58 (S.D.N.Y. 2009) ("However, the Register of Copyrights has not issued regulations explicitly permitting group registration of jewelry designs or sculptural works, rendering such works incompatible with group registration.") Therefore, I conclude that plaintiff's registration cannot be valid for a group registration.

The Copyright Act also permits the registration of multiple works as a "single work." 17 U.S.C. § 408(c)(1). For purposes of registration as a single work, copyright regulations distinguish between published works and unpublished works. 37 C.F.R. § 202.3(b)(4). This provision describes a single work, "[i]n the case of published works," as "all copyrightable elements that are otherwise recognizable as self-contained works, that are included in a single unit of publication, and in which the copyright claimant is the same." 37 C.F.R. § 202.3(b)(3)(i)(A). A published collection of works must be "sold, distributed or offered for sale concurrently." *United Fabrics Int'l, Inc. v. C & J Wear, Inc.*, 630 F.3d 1255, 1259 (9th Cir. 2011) (citing 17 U.S.C. § 101; 37 C.F.R. § 202.3(b)(4)).

A group of unpublished works may be registered as a single work if it consists of "all copyrightable elements that are otherwise recognizable as self-contained works, and are combined in a single unpublished 'collection.'" 37 C.F.R. § 202.3(b)(4)(i)(B). A combination of elements is considered a "collection" under this regulation if:

- (1) The elements are assembled in an orderly form;
- (2) The combined elements bear a single title identifying the collection as a whole;

- (3) The copyright claimant in all of the elements, and in the collection as a whole, is the same; and
- (4) All of the elements are by the same author, or, if they are by different authors, at least one of the authors has contributed copyrightable authorship to each element.

*Id.*

Plaintiff conflates the separate standards for published and unpublished works when she argues that “[a]ll submitted works were submitted and recognized as self-contained works, by the same author and are combined in a single publication, with each work identified by title and date, and were organized and assembled in orderly form.” Plt.’s Resp. Br., dkt. 115, at 21. No matter which standard plaintiff seeks to apply in this case, I conclude that she does not have a valid registration in the sculpture.

First, plaintiff’s registration does not meet the standards for published works. In *Kay Berry*, the court illustrated the concept of a published single work as follows:

The classic example of a single work is a board game. The board, the playing pieces, and the instructions may all be individually entitled to copyright protection, but since they are packaged as a single unit (the game itself), it is appropriate to allow the copyright owner to register the entire game, and protect the individual elements through that single registration.

*Kay Berry, Inc.*, 421 F.3d at 205. The court concluded that a catalog identifying by number individual “outdoor sculptures typically resembling rocks or stones” qualified as a published single work and granted copyright protection to the individual sculpture at issue. *Id.* at 202, 205-06.

In the present case, the undisputed facts show that plaintiff’s various pieces are not combined in a single publication. The registration application included a booklet containing

pictures of artwork that possibly could be considered a “single publication,” but that booklet does not contain any pictures of “Mendota Reflection.” The application also included separate individual photos of the sculpture, but no rational jury could conclude that these “loose” pictures were part of a single publication. Moreover, there is no indication that the collection is “sold, distributed or offered for sale concurrently,” *United Fabrics Int’l, Inc.*, 630 F.3d at 1259. Unlike items in a catalog or the individual items in a board game, “Mendota Reflection” is not for sale at all—it is hanging from a condominium ceiling.

Next, plaintiff’s registration does not meet the requirements for unpublished works, because it is not a “collection” that is “assembled in an orderly form.” One clear example of this type of work is an unreleased music album, containing individual songs. *Szabo*, 68 F.3d at 943-44. Another example is a package of software comprised of individual modules, *Fonar Corp. v. Domenick*, 105 F.3d 99 (2d Cir. 1997). Plaintiff’s pieces of art are in no way “assembled in an orderly form” as exemplified by the cases above. The actual pieces of art—the “elements” of the collection as defined in 37 C.F.R. § 202.3(b)(4)(i)(B)—for which plaintiff wishes to obtain registration obviously are not located in one central place.

Even if, given the dearth of precedent regarding this type of registration, this court were to stretch the term “element” to include the underlying arrangement of the pieces of art as they are assembled in plaintiff’s copyright registration application, there is no orderly form. Plaintiff haphazardly assembled a booklet of some artwork (which does not include “Mendota Reflection”) along with separate individual photos of other artwork, such that there is no unified order to the artwork that plaintiff seeks to register. This conclusion should not surprise plaintiff; she herself testified in her deposition that the artwork was not a “collection”:

Q: So you indicated before that this artwork or these pictures and this artwork here is not a collection; correct?

A: Correct.

Q: So the actual artwork that's depicted in all of these pictures is not located in one central place?

A: Correct.

Q: And there's no picture book with everything listed on here included; correct? You just said?

A: Correct.

Plt. Neri's Dep., dkt. 65 at 99.

### **III. Letter from Copyright Office**

In light of the flaws in her original application pointed out by defendants, plaintiff raises several other arguments to stave off summary judgment. First, she submits an email message from someone in the Copyright Office responding to her question about the validity of registration of the individual items in her collection. The message states: "although, you did not list the individual titles on the application, registration of an unpublished 'collection' extends to each copyrightable element in the collection."

As defendants point out, this document is inadmissible hearsay that does not appear to come within any exception to the rule against hearsay, F. Rs. Ev. 801-802. More importantly, even if this statement were admissible, it doesn't prove anything: it is most fairly read as a general statement about the rules governing collections rather than an analysis of the particular collection and sculpture at issue in this case. The authorities discussed above make clear that individual items within a collection *can* be registered as part of one application, but the

registration still must comply with the relevant regulations. In any case, letters from the copyright office do not bind this court in ruling on these claims. *Boyd's Collection, Ltd. v. Bearington Collection, Inc.*, 365 F.Supp.2d 612, 616 (M.D. Pa. 2005) (letters not created under Copyright Office's authority to promulgate regulations "do not have the 'force of law'" (citing *Christensen v. Harris County*, 529 U.S. 576, 587 (2000) ("Interpretations such as those in opinion letters" are "'entitled to respect' . . . only to the extent that those interpretations have the 'power to persuade'" (citation omitted))). It is this court's duty to determine whether plaintiff has a valid registration in the sculpture. I have concluded that she does not.

#### IV. "Application Approach"

Plaintiff argues that the court should apply something called the "application approach" to her application for registration no. VAu 1-066-185, citing to *Chicago Board of Education v. Substance, Inc.*, 354 F.3d 624 (7th Cir. 2003). I understand plaintiff to be using the term "application approach" to mean that this court should deem her to have satisfied the registration requirement of 17 U.S.C. § 411(a) because she filed an application in an *attempt* to register "Mendota Reflection," regardless whether it is actually is a valid registration of the sculpture.

Cases discussing the "application approach" discuss whether registration is complete when an application is made or, alternatively, only after the Copyright Office has acted on the application. In *Chicago Board of Education*, the court noted the issue but chose not to decide it:

Had [plaintiff's asserted copyright] been false, registration should not have issued and maybe therefore the copyright could not have been sued upon. See *Whimsicality, Inc. v. Rubie's Costume Co.*, 891 F.2d 452, 453, 456 (2<sup>nd</sup> Cir. 1989). (Or maybe yes, because the copyright would have been registered, and because the statute requires only a refused registration, which might be the equivalent

of an improper registration, not an actual registration, as the premise for the suit. We need not decide.)

*Id.* at 631 (citation omitted).

In the absence of precedent from the Court of Appeals for the Seventh Circuit clearly holding that a court should entertain infringement actions no matter how botched the registration application, I find logical and persuasive the decisions of other courts that have dismissed infringement claims unsupported by a valid registration. *E.g., Nova Design Build, Inc. v. Grace Hotels, LLC*, 2010 WL 2293468, \*2 (N.D. Ill.) (court previously dismissed infringement claim based on invalid registration because “valid copyright registration . . . is a prerequisite to bringing a copyright infringement claim”); *see also, e.g., Olander Enterprises*, 812 F.Supp. 2d at 1078-79; *Muench Photography*, 712 F.Supp. 2d at 95; *Alaska Stock, LLC*, 2010 WL 3785720 at \*4.

## V. Second Copyright Registration

During summary judgment briefing in June 2012, plaintiff, for the first time in the instant lawsuit argues that she has *another* copyright in “Mendota Reflection” and submits a copyright application dated February 14, 2012,<sup>4</sup> for registration no. VAu001092700, titled “Processes of Mendota Reflection.” Submitted with this application are photographs purporting to be pictures of the installation of the sculpture in the condominium.

As defendants point out, it is too late for plaintiff to raise this new issue in this case. Up until plaintiff filed her summary judgment materials, she has been proceeding under the theory that defendant infringed the copyright registered as no. VAu 1-066-185. Plaintiff never

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<sup>4</sup> Which is 5½ months after this court granted plaintiff leave to proceed *in forma pauperis* in the instant case on August 30, 2011, *see* dkt. 10)

attempted to amend the complaint to include allegations of infringement regarding the new registration, nor does she develop an argument supporting the proposition that the registration requirement of 17 U.S.C. § 411(a) can be met by the submission of a registration applied for after filing the infringement lawsuit. Even if plaintiff could proceed in the present case on this new registration, there is no reason to stay the schedule to allow another round of summary judgment briefing, because plaintiff has filed an entirely new lawsuit in this court against defendants for copyright infringement relating to the new registration, along with some other new claims. *See Neri v. Pinckney Holdings, LLC*, no. 12-cv-600-slc.

Accordingly, I am granting the motions for summary judgment filed by defendants (with the exception of defendant Rural Mutual Insurance Company's motion on indemnification), I am denying plaintiff's motion for summary judgment. The parties can litigate the issues pertaining to the second copyright registration in 12-cv-600.

#### ORDER

It is ORDERED that:

- (1) The motions for summary judgment filed by defendants Architectural Building Arts, Inc., Melinda Monroe, Steven Larson, Leslie Sager and Eric Ferguson, dks. 75, 80, 85, are GRANTED.
- (2) Plaintiffs Quincy Neri and Rodney Rigsby's motion for summary judgment, dkt. 88, is DENIED.
- (3) Intervenor defendant Rural Mutual Insurance Company's motion for summary judgment on its indemnification of defendant Eric Ferguson, dkt. 68, is DENIED as moot.
- (4) The remaining outstanding motions filed by the parties, dks. 121, 137, 138, 140, 144, 146, 148 and 149, are DENIED as moot.



- (5) The clerk of court is directed to enter judgment for defendants Architectural Building Arts, Monroe, Larson, Sager and Ferguson and to close the case.

Entered this 21<sup>st</sup> day of September, 2012.

BY THE COURT:

/s/

STEPHEN L. CROCKER  
Magistrate Judge